

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	4:06CR3107
	)	
v.	)	
	)	
DAGOBERTO FIGUEROA-CUEVAS,	)	MEMORANDUM AND ORDER
	)	
Defendant.	)	
_____	)	

Predicated upon *Alleyne v. United States*, 133 S. Ct. 2151 (2013) (Any fact that increases mandatory minimum sentence for crime is “element” of crime, not “sentencing factor,” that must be submitted to jury, overruling *Harris v. United States*), the defendant has filed a section 2255 motion. However, since the defendant did not seek permission from the Court of Appeals to file this second or successive motion (*see, e.g.*, filing no. [134](#) Court of Appeals Order denying previous application to file successive habeas application), and since *Alleyne* does not apply to the defendant because the statutory maximum was not increased by the gun enhancement,

IT IS ORDERED:

1. The Motion to Vacate under 28 U.S.C. § 2255 (filing no. [140](#)) is denied for these separate reasons: (a) the pending motion is a second or successive 2255 motion for which no permission to file has been obtained from the Court of Appeals and (b) the motion has no merit.
2. A separate judgment will be issued. No certificate of appealability will be issued by the undersigned.

DATED this 4<sup>th</sup> day of August, 2014.

BY THE COURT:

*Richard G. Kopf*  
Senior United States District Judge